IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22768 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHBHAI RAGHUBHAI THORAT & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR LR PATHAN for Petitioner(s) : 1 - 2.
MR SATYAM CHAYYA, AGP for Respondent(s) : 1,
MR KR RAVAL for Respondent(s) : 2,
None for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 15/01/2007

ORAL JUDGMENT

1. Rule. Mr. Chayya, learned AGP waives service of

Rule for respondent Nos.1,2, & 3 and Mr. Raval for respondent No.4.

2. With the consent of learned advocates appearing for both the sides, the matter is finally heard.

3. The only question which is required to be considered in the present petition is the nature of the order passed by the Deputy Collector without proper recording of the reasons for dismissal of the Revision.

4. I would have considered the matter on the ground of sufficiency of the reasons recorded by the Deputy Collector. However, the learned advocate appearing for the petitioners as well as for private respondents are in agreement if the matter is remanded back to the Deputy Collector for rehearing and till then, the interim arrangement made pending the petition in the present proceedings is allowed to continue.

5. Under the above circumstances, no detailed reasons are required except observing that the reasonings recorded by the Deputy Collector are not satisfactory reasons dealing with the arguments and the ground for rejection of the revision. It is expected for a Deputy Collector exercising power as a quasi judicial authority to record reasons for agreeing with the view taken by the Mamlatdar or negativing the arguments of the revisionist. The perusal of the order shows

that in the last paragraph of the order, except recording that the order of the Mamlatdar is legal and does not call for interference, the contention raised on behalf of the revisionist are not dealt with except reproduction of such contention in the earlier paragraph of the order. Therefore, the order being non-speaking order to the extent of no proper recording of the reasons, the matter deserves to be remanded to the Deputy Collector.

6. It may be recorded that when the matter came to be considered by this Court on 03.11.2006, following order was passed:

> "Mr.Pathan, learned Counsel for the petitioners, seeks time to get instructions from his client as to whether the petitioners are ready to restore the position as it was prevailing for utilization of the road by the applicant before the Mamlatdar on the date when the Mamlatdar passed the first order of injunction by removal of the obstructions etc."

7. Thereafter, on 06.11.2006, declaration was made on behalf of the petitioners and the same was recorded vide order dated 06.11.2006.

> "1. Pursuant to the order dated 3.11.2006 passed by this Court, Mr.Pathan states that even before this Court takes up the matter, with a view to show the bonafide on the part of the petitioners, the petitioners are ready to restore the position as prevailing for utilization of the road by the applicants on the date when the Mamlatdar passed the first order. However, he submitted that the

> pillars which are at the dead-end of the road is not coming as an obstruction and even if the pillars are not removed, Respondent No.4 shall be in a position to make use of the road by passing of even tractors.
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> 2. Under these circumstances, **S O to 15.11.2006.** Respondent No.4 shall confirm the said position of acting upon the aforesaid declaration by the petitioners on the next date."

By virtue of the said order read with the declaration, respondent No.4 is in a position to make use of the road by passing of even tractor and Mr. Raval confirms the said position to the extent that the pillars which were constructed are in existence and the gate is removed. Such position can be allowed to be continued until the Deputy Collector decides the revision afresh after giving opportunity of hearing to both the sides.

8. Under the above circumstances, the impugned order passed by the Deputy Collector in Revision No. 4/05 is set aside only on the ground of not recording of the sufficient reasons and it is further directed that the revision shall stand restored to the file of the Deputy Collector. The Deputy Collector shall give opportunity of hearing to all the parties to the proceeding and decide the revision afresh without being in any manner influenced by the interim arrangement as early as possible preferably within a period of three months from the receipt of the order of

this Court. Until the decision is taken by the Deputy Collector and the same is communicated to respondent No.4 by R.P.A.D.post, the present arrangement made in the present proceeding of this petition shall continue to remain in operation. It is clarified that after the order of the Deputy Collector afresh, the rights of the parties shall stand governed accordingly, of course without prejudice to the rights and contentions of either side, if agreed to challenge the order before the appropriate forum.

9. Petition partly allowed to the aforesaid extent. Rule partly made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

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